



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 20, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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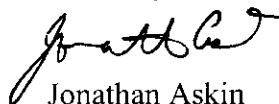
Re: In the Matter of Applications for Consent to the Transfer of Control of Licenses
and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC
Communications Inc., Transferee, CC Dkt. No. 98-141

Dear Secretary Salas:

On September 17, 1999, Jonathan Askin, representing the Association for Local Telecommunications Services, Jon Canis and Bob Riordan, representing Metromedia Fiber Network, Richard Metzger, representing Focal Communications, Ken Ferree, representing OpTel, Chris Holt and Eric Branfman, representing CoreComm Communications, and Glenn Manishin and Stephanie Joyce, representing Rhythms NetConnections, met with Commissioner Susan Ness and Linda Kinney, Legal Advisor to Commissioner Ness, to discuss proposed merger conditions in the above-referenced docket. The parties suggested several means by which to improve the merger conditions proposed by SBC and Ameritech, including the following: holding an open forum during which SBC and Ameritech officials would explain on the public record precisely what the parties have agreed to do in the merger document, requiring SBC and Ameritech to satisfy conditions prior to merger closing, expanding the most-favored nations provisions, expanding the separate affiliate obligations, expanding and expediting the collocation obligations, ensuring enforcement of the parties obligations, and ensuring that the merger conditions are treated as a floor and do not supplant other SBC and Ameritech contractual, legal, and regulatory obligations. The attached documents reflect the substance of the issues discussed at the meeting.

Pursuant to Section 1.1206(b)(1) of the Commissions rules, I am filing two copies of this letter in the above-reference proceeding. If you have any questions, please contact the undersigned at (202) 969-2597.

Sincerely,



Jonathan Askin

cc: Commissioner Susan Ness
Linda Kinney

No. of Copies rec'd 012
List ABCDE

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**SBC/Ameritech Merger Conditions
Improvements that Must be Implemented Prior to
Commission Action on the Application**

- The Commission should hold an open forum during which SBC and Ameritech officials could respond on the record to questions about the merger conditions.
- The vast majority of the conditions should be satisfied prior to Commission action on the application. If they are not, oversight of the implementation and imposition of penalties for noncompliance must be made meaningful. As currently written, the possibility of significant penalties ever being imposed is extremely small.
- Federal collocation tariffs that comply with the Commission's collocation orders in all respects must be filed and effective (i.e., the tariff review process must be completed). In addition, applicants should agree to a maximum 90-day interval from date of order to date of collocation.
- Parity of access to loop pre-qualification information must be required both before and after the merger closing date. The Commission must make a determination as to the reasonableness of the proposed loop "conditioning" rates prior to Commission action on the application.
- The 20 performance measurements proposed by SBC/Ameritech are insufficient to establish whether the companies are providing parity of service to CLECs. The Commission should adopt the performance measures adopted by either the California or Texas Commissions. In addition, there should be no automatic cessation of payments for failure to provide parity service after any particular number of months.
- In-region agreements must be available for "Most Favored Nation" treatment, regardless of which merger partner negotiated them and regardless of whether they were negotiated or arbitrated. Out of region agreements obtained by Joint Applicants' affiliates or otherwise related entities should be available for MFN.
- Applicants should be required to relocate the demarcation point at the MPOE at the request of any certificated CLEC.
- If the Commission allows the Applicants to provide Advanced Services through a separate affiliate immune from the requirements of Section 251(c), the Commission must ensure that the affiliate satisfy all the Section 272 statutory and regulatory safeguards and, in particular that the affiliate transaction rules contained in Section 32.27 of the Commission's rules apply to the transfer of assets from the Applicants to the subsidiary.
- The Commission should clarify that no condition can be a substitute for stronger existing or future FCC or state rules implementing the Telecommunications Act of 1996.
- The Commission should ensure that procedures for expedited resolution of disputes arising from implementation of the conditions is in place.

CoreComm Presentation on Proposed SBC/Ameritech Merger Conditions

September 17, 1999

I. COLLOCATION (§§ 37-41)

Problem

- Joint Applicants seek discretion to comply with the FCC's Rules through tariff *or* amendment to interconnection agreements; each of these approaches presents problems.
 - If Joint Applicants choose to employ amendments, rather than tariffs, special problems will result for CLECs that have been using Ameritech's tariffs.
 - Such CLECs cannot benefit without a full interconnection agreement, which means considerable delay.
 - Meanwhile, "window" on benefits continues to run, reducing time frame and benefits for those CLECs
 - Tariffs and amendments will not be reviewed before merger closing; if non-compliant, no remedy is provided.
 - The review that takes place after merger closing—as reflected in Attachment B—will ensure only that Joint Applicants have "policies and procedures (as described in the attachment) in place . . . regarding compliance with the [FCC's] collocation requirements," not that those policies and procedures actually *comply* with FCC requirements.
 - The interconnection agreement amendment process provides opportunities for Joint Applicants to seek unreasonable conditions, forcing CLECs to choose between accepting such conditions and incurring delay.
 - Who will resolve disputes?
 - CLECs will lose benefits while disputes are pending resolution.

Solution

Require that the proposed tariffs and amendments receive FCC review and approval before merger closing.

Problem

- Joint Applicants' Proposal does not include collocation provisioning intervals for use in the states that have not imposed any.

Solution

Permit CLECs to elect a 90-day interval from date of order to date of collocation. (See Ohio Stipulation, in which Joint Applicants agreed to provision collocation in 90 days.)

Problem

- No penalty for missed collocation due dates applies until Joint Applicants miss the due dates by 60 days, giving them a "penalty-free" 60 day grace period.

Solution

Follow approach of Ohio Stipulation, in which Joint Applicants agreed to refund 50% of prepaid collocation fees if not completed within 90 days from application and 100% if not completed within 120 days from application.

II. CARRIER-TO-CARRIER PROMOTIONS (¶¶ 45-49)

Problem

- If Joint Applicants choose to employ amendments, rather than tariffs, special problems will result for CLECs that have been using Ameritech's tariffs.
 - Such CLECs will need a full interconnection agreement, which means considerable delay.
 - Meanwhile, "window" on promotional period continues to run, reducing time frame and benefits for those CLECs.
- The interconnection agreement amendment process provides opportunities for Joint Applicants to seek unreasonable conditions, forcing CLECs to choose between accepting such conditions and incurring delay.
 - Who will resolve disputes?
 - CLECs will lose benefits while disputes are pending resolution.

Solution

Promotional rates should be automatically available, without amendments.

Problem

- The promotional discount is unavailable for service to small business customers, a market segment that the Commission has recognized is underserved and worthy of special attention.

Solution

The discount should also be available for service to small business customers, using the *UNE Remand Order*'s dividing line of fewer than 4 lines.

Problem

- Former CLEC customers count towards the caps on discounted loops and resold lines, providing Joint Applicants an incentive to engage in anti-competitive winbacks (CoreComm already has experience with anti-competitive winback tactics of Ameritech).

Solution

A cap should not be considered met unless CLECs serve the stated number of customers at the time it is met, without counting former CLEC customers.

Problem

- Customers served by loops and resold lines first sold before the window opens are ineligible for the promotional discount, making those pioneering customers undesirable to competing CLECs.

Solution

During the window period, the promotional discount should be available for all loops and resold lines, regardless of when they were first purchased.

Problem

- The promotional discount is unavailable for loops used for Advanced Services, removing the promotional incentive for carriers to offer integrated services, thereby undermining the Commission's attempts to promote competitive availability of advanced services.

Solution

Loops used to provide residential service should be subject to the discount, regardless of the type of service offered.

III. MOST FAVORED NATIONS PROVISIONS (§§ 42-43)

A. In-Region MFN

Problem

- In-region agreements are unavailable if they were negotiated, even in part, by an ILEC before it became an SBC affiliate.
 - This restriction effectively insulates Ameritech from the MFN merger conditions.
 - A CLEC that is familiar with an Ameritech agreement in one state should be able to use it in the other states as well
 - A CLEC seeking uniformity in its agreements will be forced to use an SBC agreement.

Solution

In-region agreements should be available for MFN, regardless of which merger partner negotiated them.

Problem

- In-region agreements are unavailable for MFN if they were arbitrated, or negotiated with a PUC, such as the Texas PIA.

Solution

Such agreements should also be available for MFN.

Problem

- CLECs must accept all "reasonably related" terms, which will lead to controversy as to what is "reasonably related" and ensuing delay in the absence of a dispute resolution mechanism.

Solution

The FCC should establish a process for expedited resolution of such disputes.

B. Out-of-Region MFN

Problem

- Provisions of out-of-region agreements are available only if the Joint Applicants' affiliate was a "trailblazer" that received a service or a UNE not previously available to any other CLEC in that State.

Solution

Provisions of all out-of-region agreements obtained by Joint Applicants' affiliates should be available for MFN.

IV. EFFECT OF CONDITIONS (§75)

Problem

- A CLEC that has utilized a state merger condition may not utilize a substantially related federal condition. This creates a dilemma for CLECs that are active in states like Ohio that have imposed merger conditions.
 - Should they sign the amendments that Joint Applicants require for invocation of state merger conditions, knowing that they may lose the benefit of more effective federal conditions?

- Or should they accept delay in receiving any benefits by not signing, thereby losing the state benefits that they have bargained for, in the hope of later obtaining better federal benefits?

Solution

Where a CLEC has taken advantage of a state merger condition:

- If there is no overlap, the CLEC can take advantage of the federal condition.
- If there is overlap, the CLEC may at its option switch from the state condition to the federal one (for example, stop ordering loops at the state discount, and start ordering them at the federal discount); however, the CLEC must exercise a single option with respect to a single event (it may not start a state ADR process for a particular dispute, then switch in the middle to a federal one, as provided in ¶ 54).

V. ADVANCED SERVICES (¶¶ 1-14)

Problem

- Joint Applicants have access to loop pre-qualification information from a database unavailable to CLECs for 180 days after merger closing, providing Joint Applicants with a critical 6 month "head start" in the race to capture share in the new market for advanced services.

Solution

Parity of access to loop pre-qualification information should be required.

VI. PERFORMANCE STANDARDS/LIQUIDATED DAMAGES (¶¶ 23-24)

Problem

- Joint Applicants offer only 20 performance measures, as compared with 122 to which they have stipulated in Texas, 79 to which they have stipulated in Ohio, and 122 which are in the tentative conditions in Illinois.

Solution

Require Joint Applicants to comply with all 122 Texas performance measures.

Problem

- There is no provision for providing liquidated damages to CLECs for violations (payments for violations now go to the U.S. Treasury, unlike the July 1 proposal, in which payments for violations went to the injured CLECs).

Solution

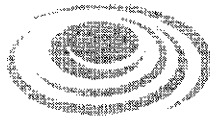
Restore provision requiring payments of liquidated damages to injured CLECs.

Problem

- There is no dispute resolution mechanism for alleged breaches.

Solution

Appoint an independent administrator to determine if breaches warrant payments.



RHYTHMS™

Comments on SBC-Ameritech Proposed Merger Conditions Second Filed Version Presented to Commissioner Ness September 17, 1999

Proposed Conditions Do Not Safeguard Competition

- Line sharing proposal gives affiliates exclusive access
- Proposal does not adequately ensure provision of loop make-up information
- Proposed loop "conditioning" rates are exorbitant and have no cost support
- Proposal does not ensure proper implementation of *Advanced Services* Order collocation rules; independent auditor is an insufficient enforcement mechanism

Proposed Advanced Services Affiliate Requirement Has Anticompetitive Implementation

- Advanced services affiliates receive discriminatory treatment
- Insufficient separation between SBC-Ameritech and affiliates – order completion, customer care, operations and maintenance
- SBC-Ameritech retains ability to leverage incumbent status into DSL market

Approval Without Conditions Is Preferable to SBC's Proposal

- Conditions remove key legal safeguards to anticompetitive conduct that CLECs would otherwise enjoy
- Proposal creates conditions that will prejudice outcome of *Advanced Services FNPRM* on line sharing and spectrum management
- Proposal determines manner in which collocation and OSS compliance will be implemented and enforced
- Section 272 separations rules severely are curtailed in proposed advanced services affiliate requirement

Due Process Requires Opportunity for Public Comment on Proposal

- Rhythms recommends public forum for SBC presentation of proposal
- Conditions contain irreconcilable inconsistency within key provisions, including crucial advanced services affiliate requirement
- Commission requires record detailing SBC's intent in its Proposal

**METROMEDIA FIBER NETWORK
PROPOSED CHANGES TO SBC/AMERITECH CONDITIONS**

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conditions, whereas the previous total was capped at \$10 million. The revised conditions also reflect new procedural provisions that clarify enforcement of SBC/Ameritech's commitments.

Collocation Compliance. Ameritech and SBC will be required, 10 days after the merger closing and more comprehensively thereafter, to provide the Commission with an independent auditor's review verifying that Ameritech and SBC are complying with the Commission's collocation requirements. SBC and Ameritech have modified the Collocation Compliance Plan to address the concerns of various commenters. In particular, state commissions will now have access to the working papers and supporting materials of the independent auditor on a confidential basis.

As a new and additional incentive to ensure that telecommunications carriers receive collocation from SBC/Ameritech in a timely manner, SBC/Ameritech would now, in the revised conditions, be required to compensate carriers for missed collocation due dates caused by SBC/Ameritech. For three years from the merger closing date, SBC/Ameritech will provide a full, 100 percent waiver, credit, or refund of nonrecurring collocation charges where SBC/Ameritech misses by more than 60 days a due date for installing a qualifying collocation arrangement

Most Favored Nation Provisions for In-Region Arrangements. The proposed conditions submitted on July 1, 1999, facilitated open local markets by providing all carriers in SBC/Ameritech's 13 states additional options for entering local markets. One of these proposed conditions ensures that ~~SBC/Ameritech's CLEC will not seek and receive~~ **SBC/Ameritech's competitive carrier interest will not utilize** terms outside SBC/Ameritech territory that ~~SBC/Ameritech would not offer to CLECs~~ **does not provide to competitive carriers** inside its territory. Another requires SBC/Ameritech, where technically feasible, to make available to any requesting telecommunications carrier, in any SBC/Ameritech state, terms for interconnection arrangements or UNEs that SBC/Ameritech ~~voluntarily negotiated~~ **obtained or has available** in another SBC/Ameritech state. Both of these conditions have been clarified in response to CLEC and Staff suggestions. Moreover, ~~CLECs~~ **competitive carriers** opting into an SBC/Ameritech agreement from another in-region state will now have the ability to take the prices set for that other state on an interim basis subject to true-up, thus speeding their opportunity to utilize the desired service arrangement.

Carrier-to-Carrier Promotions. As an additional incentive to promote residential telephone exchange service competition in its local service territories, SBC/Ameritech will offer carrier-to-carrier promotions that address each of the major modes of entry. In the SBC/Ameritech States, these unprecedented promotions include: (i) resale discounts for residential services starting at 32 percent off of the retail rate established by the relevant state commission; (ii) access to the UNE Platform to serve residential customers under UNE pricing rules in all central offices, without regard to the outcome of the Commission's remand proceedings regarding Rule 51.319; and (iii) discounts on recurring charges for unbundled residential loops that will average 25 percent below the cost-based price set by the relevant state commission.

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a. The following business rules (based on Measurement Number 17 in Attachment A-2a - Percent Missed Collocation Due Dates from the Performance Measurements) will be used for purposes of this Paragraph. The rules apply to all requests for physical, virtual, adjacent structure, and cageless collocation in a LATA where the requesting telecommunications carrier has submitted no more than 5 collocation requests to SBC/Ameritech in a LATA within a 30-day period that includes the date of the request; Requests in excess of 5 collocation arrangements per LATA will be included when the requesting telecommunications carrier meets with SBC/Ameritech in advance of its submission of the requests and negotiates a mutually agreeable deployment schedule. If no such agreement is reached, this condition shall apply to the first 5 requests received from the telecommunications carrier for the LATA during the 30-day period.

b. Unless otherwise mutually agreed, due dates for collocation requests will be established by SBC/Ameritech, in compliance with the standard collocation intervals included in the approved tariff or relevant interconnection agreement existing as of the Merger Closing Date, whichever governs the provision of collocation in the relevant state. Due dates may be extended when mutually agreed to by SBC/Ameritech and the telecommunications carrier, or by acts of God or force majeure events or when such carrier fails to complete work items for which the carrier is responsible in the allotted time frame. The extended due date will be calculated by adding to the original due date the number of calendar days that SBC/Ameritech and the telecommunications carrier agree were attributable to Acts of God or force majeure events or that the telecommunications carrier was late in performing said work items. Work items include, but are not limited to, the telecommunications carrier return to SBC/Ameritech of corrected and complete floor plan drawings and placement of required components(s) by such carrier or its vendor. If SBC/Ameritech and the carrier cannot agree on the extended due date, this dispute will be submitted to the Chief of the Common Carrier Bureau for resolution.

c. A due date is considered met when SBC/Ameritech turns the space over to the telecommunications carrier (for physical collocation), completes installation of virtually collocated equipment (or provides notification that the space is ready for installation where the carrier provides the virtually collocated equipment), or, in the case of adjacent structure collocation and cageless collocation where the carrier provides its own bays, when SBC/Ameritech provides the requested interconnection and power cabling to the collocation space.

XII. Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements

42. Out-of-Region Agreements. SBC/Ameritech shall make available to telecommunications carriers in the SBC/Ameritech Service Area any service arrangements that an incumbent LEC (not an SBC/Ameritech incumbent LEC) ~~develops for~~ provides to an SBC/Ameritech affiliate, ~~at the request of the SBC/Ameritech affiliate, where the SBC/Ameritech affiliate operates as a new local telecommunications carrier or interest.~~ Specifically, if the SBC/Ameritech out-of-territory entity described in Paragraph 59 make a specific request for and obtain any interconnection arrangement or UNE from an incumbent LEC that had not previously been made available to any other telecommunications carrier by that

incumbent LEC, then SBC/Ameritech's incumbent LECs shall make available to requesting telecommunications carriers in the SBC/Ameritech Service Area, through good-faith negotiation, the same interconnection arrangement or UNE on the same terms (exclusive of price).

~~SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of the state for which the request is made. Disputes regarding the availability of an interconnection arrangement or UNE shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 U.S.C. § 252 to the extent applicable.~~ The price(s) for such interconnection arrangement or UNE shall be negotiated on a state-specific basis and, if such negotiations do not result in agreement, SBC/Ameritech's incumbent LEC shall submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Paragraph, to the applicable state commission for resolution under 47 U.S.C. § 252 to the extent applicable. To assist telecommunications carriers in exercising the options made available by this Paragraph, SBC/Ameritech or the out-of-region entit(ies) described in Paragraph 59 shall post on its Internet website all interconnection agreements between the SBC/Ameritech out-of-territory entity and an unaffiliated incumbent LEC.

43. In-Region Agreements. Subject to the conditions specified in this Paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in the SBC/Ameritech Service Area within any SBC/Ameritech State any interconnection arrangement or UNE in the SBC/Ameritech Service Area within any other SBC/Ameritech State that (1) was established ~~negotiated~~ with a telecommunications carrier, ~~pursuant to 47 U.S.C. § 252(a)(1), by an SBC/Ameritech incumbent LEC that at all times during the interconnection agreement negotiations was an affiliate of SBC~~ and (2) has been made available under an agreement to which SBC/Ameritech is a party. ~~Terms, conditions, and prices contained in tariffs cited in SBC/Ameritech's interconnection agreements shall not be considered negotiated provisions. Exclusive of price and subject to the conditions specified in this Paragraph, qualifying interconnection arrangements or UNEs shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), provided that the interconnection arrangements or UNEs shall not be available beyond the last date that it is available in the underlying agreement and that the requesting telecommunications carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement.~~ The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis pursuant to 47 U.S.C. § 252 to the extent applicable. Provided, however, that pending the resolution of any negotiations, arbitrations, or cost proceedings regarding state-specific pricing, SBC/Ameritech shall offer to enter into an agreement with the requesting telecommunications carrier whereby the requesting telecommunications carrier will pay, on an interim basis and subject to true-up, the same prices established for the interconnection arrangement or UNE in the negotiated agreement. ~~This Paragraph shall not impose any obligation on SBC/Ameritech to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. § 252, or the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. § 252(a)(1). For~~

~~example, terms made available in Texas through SWBT's Proposed Interconnection Agreement ("PIA") (filed with the Texas PUC on May 13, 1999) would not be available under this Paragraph. SBC/Ameritech shall not be obligated to provide pursuant to this Paragraph any interconnection arrangement or UNE unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made. Disputes regarding the availability of an interconnection arrangement or UNE shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 U.S.C. § 252 to the extent applicable.~~

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59. SBC/Ameritech entities (including SBC/Ameritech and one or more entities in which SBC/Ameritech owns an equity interest, ~~or the equivalent thereof, of more than 50 percent~~) shall offer local services in out-of-territory markets as described in this Paragraph. The SBC/Ameritech entities offering local service in out-of-territory markets shall be referred to as the 'SBC/Ameritech Out-of-Territory Entities'.

a. The SBC/Ameritech Out-of-Territory Entities shall provide local service, as described in Subparagraph c of this Section, in 30 markets in which SBC/Ameritech currently does not operate as an incumbent LEC (the "out-of-territory markets"), which may include markets in states currently served by SBC/Ameritech's incumbent LECs. One or more SBC/Ameritech Out-of-Territory Entity(ies) may be used to satisfy the requirements contained in this Section for each of the 30 markets. Each of the 30 markets shall be chosen from the 50 out-of-territory markets listed in Attachment B and shall consist of the area defined by the Office of Management and Budget, as of June 30, 1998, as the Primary Metropolitan Statistical Area of the market (the "PMSA").

b. The initial deployment deadlines for the 30 markets shall be as follows:

(1) In the Boston, Miami, and Seattle markets, 12 months after the Merger Closing Date.

(2) For 12 additional out-of-territory markets (chosen by SBC/Ameritech at its sole discretion from the markets listed in Attachment B), 18 months after the Merger Closing Date.

(3) For the remaining 15 out-of-territory markets (chosen by SBC/Ameritech at its sole discretion from the markets listed in Attachment B), the later of: (i) 30 months after the Merger Closing Date, or (ii) 60 days after the date upon which SBC/Ameritech first holds valid authorization to provide originating voice and data interLATA services to at least 60 percent of all access lines (as reported under the Commission's Part 43 rules) served by SBC/Ameritech's incumbent LECs (including SNET).

c. SBC/Ameritech shall have fulfilled all requirements of this Section if, for each of the 30 out-of-territory markets, an SBC/Ameritech Out-of-Territory Entity meets each of the following service requirements for each of the 30 markets:

(1) No later than the initial deployment deadline for the market, an SBC/Ameritech Out-of-Territory Entity shall install a local telephone exchange switch or otherwise obtain local telephone exchange switching capability from a party other than the incumbent LEC in that market. A switch used by an affiliate (as defined in 47 U.S.C. § 153(1)) of SBC/Ameritech to provide cellular or PCS service in an out-of-territory market shall not satisfy this requirement.